IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Customs Appeal Nos. 52204, 52799, 52849, 52850, 52906 & 53425 of 2015

[Arising out of order-in-original No. 9/2015 dated 30.4.15 passed by the Commissioner of Central Excise, New Delhi]

Shri Awtar Singh Bedi **Appellant**
Mr. Anil Mittal
Mr. Ajay Sharma,
Shri Vijay Sharma,
Shri Abhishek Dua
Mr. Tapaswi Singh CHA

Vs.

Commissioner of Customs **Respondent,**
Delhi II

Appearance:

S/Shri Prabhat Kumar, S S Dabas, S K Pahwa, Awaneet Singh, Advocates for the Appellants
S/Shri S Nunthuk, Jt. CDR, R K Manjhi and P Juneja, DRs for the Respondent-Revenue

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing : 05.07.2017
Date of Decision : 02.11.2017

FINAL ORDER NO.57542-57547 /2017

Per: V. Padmanabhan:

These six appeals are filed against the order-in-original No. 9/2015 dated 30.4.15. The Directorate of Revenue Intelligence investigated the goods imported in two containers at 'ICD Tuklakabad ' New Delhi. Bill of Entry No. 7140848 dated 18.6.2012 was filed by M/s. Mahadev Trading House. (proprietor Shri Vijay Sharma) and Bill of Entry No. 7140855 dated 18.6.2012 was filed by M/s. Avtar International. (proprietor Shri Sunil Kumar). Both Bill of Entries were filed by the CHA M/s. Abhinav Cargo Movers (Proprietor Shri Tapasvi Singh). When the two containers were opended and examined by DRI officers, it was found that in addition to the declared goods, contraband in the form of 'Refrigerant R-22 gas'. The import of R-22 gas was prohibited since this was in the nature of ozone depleting substance. Samples of R-22 gas cylinders were drawn from both the containers and sent for testing to the Defence Research & Development Organisation, Centre for Fire Explosive s & Environment Safety, Delhi (in short CEFEES) for chemical analysis. The CEFEES vide their analysis report dated 10.12.2012 confirmed that the cylinders contained R-22 gas which is an Ozone Depleting Substance (in short ODS). The detailed examination of the cargo in both the containers revealed that the containers contained other consumer goods viz, table napkin papers, decorative items, AA cells etc. The goods in both the containers are seized by DRI and detailed investigations were taken up.

2. The salient points of the modus operandi unearthed by the DRI are summarised below:

(i) The Bills of Entry were filed by Shri Tapasvi Singh (CHA) as per the discussions he had with Shri Avtar Singh Bedi who approached him and handed over import related documents, without verification of genuineness of the importer. The Bill of Entries were filed on the basis of understanding between these two persons that CHA will be paid double the amount normally charged from clients in view of mis-declaration in both containers.

(ii) S/Shri Ajay Sharma, Abhishek Dua as well as Shamit Bhasin joined together and schemed to import prohibited/ restricted goods through dubious means by enticing certain persons through monetary consideration to open proprietary firms which were subsequently used for import of contraband. These three individuals advanced the money for such imports, travelled to China to purchase such contraband by paying cash and get them loaded in containers in such a way that the contraband is stuffed deep inside the container but other goods were used to conceal the same. The proprietors of these firms were kept in the dark about the concealments. Even the Bank accounts opened in the name of such firms were also operated by these three individuals.

(iii) The investigation revealed that the following four firms have been opened by the three individuals above. (1) Action Trading, Prop. Shri Rajesh Suri (2) Tirumalai Trading Prop Shri C P Sharma (3) Mahadev Trading House, Prop. Shri Vijay Sharma and (4) M/s. Avtar International Prop Shri Sunil Kumar.

The firms at S No. 3 and 4 were used for the imports under investigation.

(iv) Shri Anil Mittal, associated with M/s. Steel Birds Impacts travelled to China and arranged for procurement of gas stroves which were used in one of the containers for concealing the R 22 contraband.

(v) Shri Tapasvi Singh, CHA in his statements admitted that he had cleared the imports earlier made in the name of M/s. Action Trading and Tirumala International. He and Avtaar Singh Bedi had hatched a plan to clear the R 22 cylinders in the two containers as per the instruction from Ajay Sharma, Abhishek Dua and Shamit Bhasin in return for receiving Rs.10 lakh.

3. During the course of investigation, the valuation of goods, other than R 22 cylinders (which comprised of declared as well as undeclared goods) which were used to conceal R 22 was valued on the basis of market inquiry to ascertain the wholesale market price in India. The assessable value was arrived after permitting allowable deductions from the market price.

4. The adjudicating authority, after due process of adjudication, finalised the show cause notice with the issue of impugned order in which it was ordered as follows:

(1) R 22 gas cylinders were ordered for absolute confiscation,

(2) The assessable value of goods (other than R 22) - both declared and undeclared - were redetermined and such goods were ordered for confiscation but allowed for redemption on payment of fine,

(3) Penalties were imposed on both the importers.

(4) Personal penalties were also imposed on various persons who were found involved in the act of smuggling.

5. The present six appeals have been filed by the following persons:

1. C/52204/ 2015 : Awtar Singh Bedi

2. C/52799/ 2015 : Mr. Anil Mittal partner, M/s. Steelbird Impex

3. C/52849/ 2015 : Mr. Ajay Sharma, Financer

4. C/52850/2015 : Mr.Vijay Sharma Prop Mahadev Trading House

5. C/52906/ 2015 : Abhishek Dua

6. C/53425/ 2015 : Mr. Tapaswi Singh CHA

6. With the above background, we heard S/ Shri Prabhat Kumar, S S Dabas, S K Pahwa, Awaneet Singh, learned advocates appearing for the appellants and Shri S. Nunthuk Jt. CDR, Shri R K Manjhi, and Shri P Juneja, DRs appearing for the Revenue.

7. We discuss below the case of various appellants.

7.1 Shri Vijay Sharma

Shri Vijay Sharma, Prop of Mahadev Trading House in his grounds has claimed that he was not aware of the contents of consignments. He further challenged the method of valuation adopted for R 22 gas as well as the LPG stoves imported. His submission is that evidence of contemporaneous import has not been produced.

The Bills of Entry have been have been filed by Mahadev Trading House for the import made with his IEC number. Hence, he is to be held liable for declaration made in the Bill of Entry. As against the declaration of LPG stoves made in the Bill of Entry, the goods were found to contain the prohibited R 22 gas. Further, mis-declaration was also noticed in terms of number and description of the LPG stoves. In view of the above discussions, the goods have rightly been ordered for confiscation. Order regarding Shri Vijay Sharma is sustained. The valuation of goods has been made on the basis of market inquiry. Detailed reasons have been recorded in para 40 of the the impugned order regarding the methodology adopted for valuation of the goods. In the facts and circumstances of the case, we are of the view that the basis adopted for valuation of goods is reasonable and hence is sustained. Since the other goods i.e. LPG stoves have been used for concealing the contraband goods (R 22) , these goods are also liable for confiscation as has been done by the adjudicating authority. Hence, the confiscation of the imported goods is upheld. The Redemption Fine and penalties are also sustained.

7.2 Shri Ajay Sharma and Shri Abhishek Dua -

Both the above persons in their grounds have stated that they were under the bonafide belief that R 22 gas can be cleared on payment of fine and penalty. They have also submitted that the valuation of imported goods adopted by the adjudicating authority is on the higher side and prayed for a lenient view in respect of penalties. .

The R 22 gas is a ozone depleting substance and it is prohibited for import under the provisions of Import Trade Regulations. Consequently, the clearance of such goods cannot be allowed on payment of fine and penalty and has been rightly confiscated absolutely by the adjudicating authority. The adjudicating authority has given detailed reasons for finalising the valuation of the R 22 gases in para 40.6. In the facts and circumstances of the case, we find the method of valuation adopted to be reasonable and is upheld.

S/Shri Ajay Sharma and Abhishek Dua have played the roles of king pin in carrying out smuggling of prohibited gases . They have schemed together along with Shri Shamit Bhasin to hatch a conspiracy to import prohibited goods and conceal the same in containers and camouflage the same with other consumer goods. They appear to have indulged in such smuggling in the past also even though they were not caught. They have got proprietary firms opened in the names of other persons by giving monetary considerations and made use of such firms for import of contraband. In the facts and circumstances of the case, the penalty imposed on these two persons by the adjudicating authority is fully justified and is upheld.

8 Avtaar Singh Bedi and Tapasvi Singh

It has been submitted on behalf of Tapasvi Singh, prop of CHA firm that he filed the import documents as per the details given by the importer. As such, he cannot be held liable for the contraband goods found in the import consignments. Further, it has been submitted that the importers have given letters absolving the CHA of the responsibilities for contents. He denied any connivance in the import of prohibited goods. On behalf of Avtar Singh Bedi, it has been submitted that he merely handed over the import documents to the CHA for filing Bill of Entry and was in no way connected with the present import.

The roles played by these two persons have been dealt with in detail by the adjudicating authority. The investigation had conclusively established that Shri Bedi as well as Shri Tapsavi have conspired with the defacto importers i.e. Shri Abhishek Dua, Shri Ajay Sharma and Shri Shamit Bhasin for clearance of contraband in the containers. It has been admitted in the statements by both the persons that they had agreed to do the same in return for payment of cash of Rs. 10 lakh. These as well as other facts of the case bring out the fact that these persons had played a serious role in the smuggling of contraband gases. Consequently, penalties imposed on these persons are fully justified and are upheld.

7.4**.** **Shri Anil Mittal** has submitted that his role is limited to the procurement of LPG gas stoves and had no role to play in import of prohibited R 22 gases. He has further submitted that there is no evidence implicating him in the act of smuggling

The DRI investigation has brought out the fact that Shri Anil Mitta collected an advance of Rs 10 lakh in cash for making payment for the stoves. He has also managed such procurement through Shamit Bhasin by making payments to the Chinese supplier's representative in India. The very fact that LPG stoves were used to conceal R 22 gas is enough to uphold the charge of abetment in smuggling on Shri Anil Mittal. The adjudicating authority has further held that the LPG stoves also are liable for confiscation. Consequently, we find no reason to interfere with the penalties imposed on Anil Mittal. Same is upheld.

6. All the above persons have been found to hatch a conspiracy along with other persons and had engineered the import of prohibited goods in the form of R 22 gas. Such gases are known to cause irreparable environmental damage by destroying the ozone layer. Smuggling of such gases in such huge quantities is a very serious matter and but for the interception of such consignment before its release by DRI, the smuggling could not have been stopped.

7. In view of the above, the impugned order is sustained entirely and all the appeals are dismissed.

(Pronounced in the open Court on 02.11.2017)

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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